
a guide to landlord and tenant law

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Renting In Hamilton

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Preface

Over the past few decades, rental accommodation has become an increasingly important form of housing in Ontario. Between 1941 and 1976, for example, the number of households living in rented accommodation more than doubled, with the most dramatic increase occurring between 1961 and 1971, when the number of tenants increased by 70 percent.

Against the background of these changing social conditions, landlord and tenant law as it existed prior to 1970 proved to be inadequate in many respects. Rooted in the rigid property law notion of 'leasehold estate', landlord and tenant law did not focus on the particular rights or interests of landlords and tenants in urban residential settings, but treated agricultural, commercial, and residential tenancies in precisely the same manner. To remedy this situation, the Ontario legislature enacted Part IV of **The Landlord and Tenant Act** effective in 1970 to deal specifically with the rights and obligations of residential landlords and tenants. Further changes in this area of law came five years later, when rent review and new procedures for the termination of residential tenancies were adopted. More recently, **The Residential Tenancies Act, 1979** sought to create a single administrative commission to deal with all questions concerning rent review and landlord and tenant law; to date, however, only those parts of this legislation dealing with rent review are in effect until questions concerning the constitutional validity of the commission are resolved.

This booklet is a layman's guide to these and other laws relating to rental accommodation. Its primary purpose is to outline the rights and obligations of landlords and tenants and the ways in which these rights and obligations may be enforced, but a wide range of topics outside the scope of landlord and tenant law itself are discussed. These include rent review and a number of types of rental accommodation, such as university residences and boarding houses, that are quite common, but not usually viewed as falling under **The Landlord and Tenant Act**. An outline of municipal by-laws concerning health and safety standards in the Hamilton area is also included.

While this booklet may answer a broad range of questions about an area of law that is often bewildering, it should be used as a source of background information only; it is not intended to take the place of trained legal counsel. Persons who are experiencing problems with landlords or

tenants or who have questions not answered in this guide should consult a lawyer, community legal aid worker, or one of the other sources of help listed in the back of this publication.

It is our belief that many of the problems arising between landlords and tenants are not the result of ill will, but are caused by uncertainty or misinformation about the rights and obligations imposed by current legislation. While the courts are available to settle disputes where negotiation and discussion fail, we hope that by clarifying the respective legal positions of both parties, our guide will help solve or minimize some of these problems by lessening tensions and promoting greater understanding in landlord-tenant relationships. ■

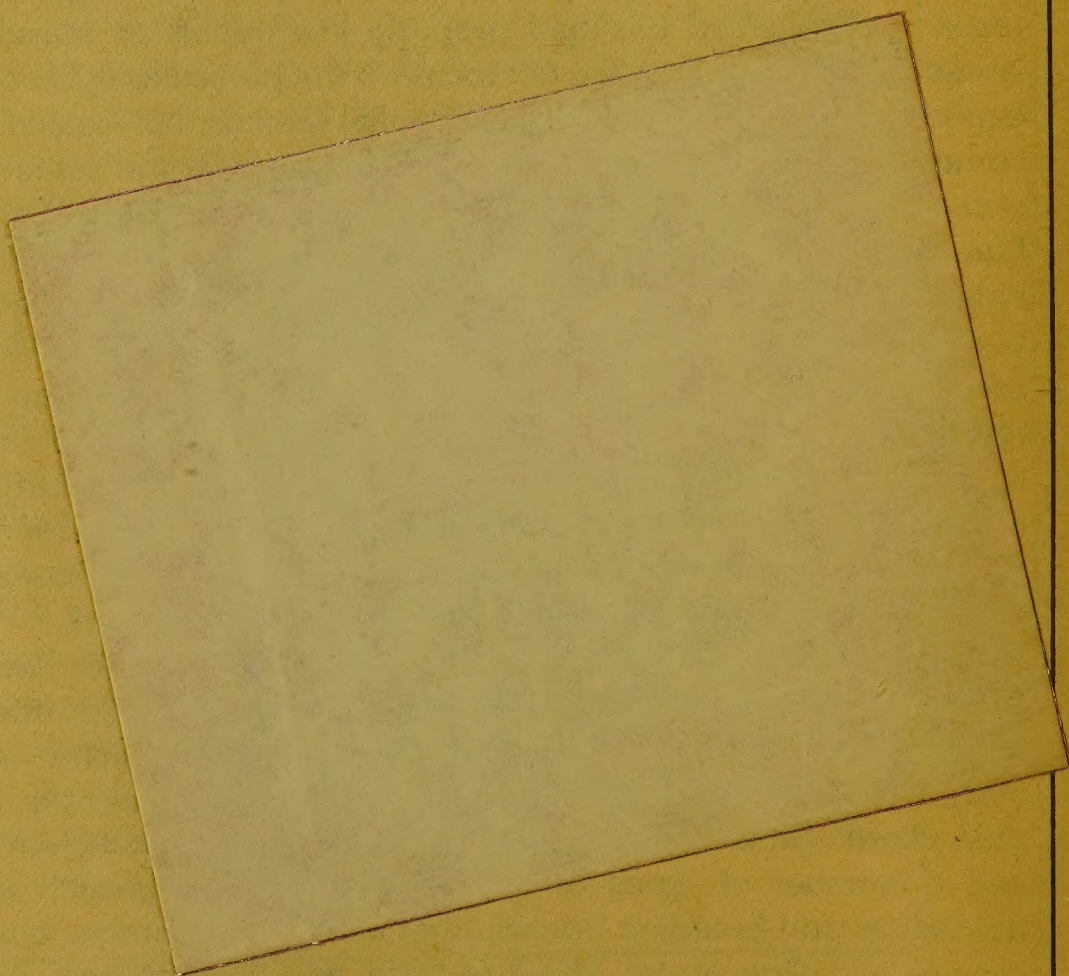


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Landlord and Tenant Law

1) Introduction

Modern residential landlord and tenant law originates in a common law notion known as 'leasehold'. The current legislation governing this area of law is Part IV of **The Landlord and Tenant Act**, a piece of Ontario legislation passed in 1970 and most recently amended in 1975. This law outlines all matters relating to the landlord-tenant relationship.

In essence, the relationship between a landlord and a tenant-- known as a 'tenancy'-- involves the transfer of possession of the rented premises from the landlord to the tenant in exchange for the rent. However, certain types of rented accommodation such as university residences and some boarding houses are not classified as tenancies because other requirements must also be met. These exemptions to landlord and tenant law are discussed in a later section of this guide.

(a) Entering the Agreement

Most tenancies are created by written agreements known as 'leases'. However, oral agreements, and agreements implied from the circumstances, are also recognized by **The Landlord and Tenant Act**.

Most landlords require tenants to complete an application for a lease or tenancy before agreeing to rent the premises. Landlords must comply with s.3 of the Ontario Human Rights Code, which prohibits landlords from discriminating on the grounds of race, creed, colour; sex, ancestry, national origin, or place of origin when considering applications from prospective tenants. A person who feels that he or she is suffering such discrimination should contact the Ontario Human Rights Commission, a branch of the Ministry of Labour, in Hamilton located at 1 West Avenue S.

Many landlords provide tenants with commercially-printed, standard form leases. These documents are legally binding when signed, but they are negotiable up to that point. Therefore, if a tenant feels that a clause in a lease seems unfair or overly restricting, he or she should ask the landlord to change it; similarly, clauses may be added if the landlord and tenant agree to do so. It should be noted, however, that if a lease contains clauses that conflict with **The Landlord and Tenant Act**, those clauses will be void and not legally binding. If the landlord and tenant enter into a written agreement or lease, the tenant must receive a copy within twenty-one

days, or the tenant is not obliged to comply with its terms. Certain obligations such as the obligation to pay rent continue, however, even though the lease is not in force. (See **Rights and Obligations of Landlords and Tenants**).

A landlord has the right to require a tenant to pay a security deposit equal to one month's rent. This amount, however, can only be applied to the last month's rent-- the landlord cannot, for example, apply the deposit to pay for damage caused by the tenant; if a tenant causes damage, the landlord must take other steps under the Act (see **Rights and Obligations under The Landlord and Tenant Act**). Also, the landlord must pay 6 per cent annual interest on the tenant's deposit.

The Act forbids landlords from requiring tenants to give post-dated cheques for the payment of rent. In some cases, however, a tenant's application will be turned down if he or she refuses this demand. A good idea, therefore, is to pay by post-dated cheque, but send the landlord a covering letter specifying that payment was made in this manner. The tenant of course should keep a copy of all correspondence with the landlord. After the lease has been signed and the tenant is secure, he or she should refuse to give the landlord any further post-dated cheques; if the landlord attempts to take any action against the tenant, the letter may be entered into court as evidence of an illegal demand by the landlord, and the landlord will not be allowed to take action in retaliation against the tenant for merely trying to secure his or her rights under the Act.

Also, **The Landlord and Tenant Act** abolishes a common law doctrine known as **interesse termini**, which used to allow a landlord to back out of a tenancy agreement at any time before the tenant actually took possession of the premises by moving in. The abolition of this practice means that tenancy agreements take effect, and are therefore enforceable, from the moment the agreement is made, whether the agreement is written, oral, or implied from the circumstances, regardless of whether or not the tenant actually began living in the apartment or flat.

(b) Types of Tenancies

A landlord and tenant may enter into one of two types of tenancies: **fixed term tenancies**, and **periodic tenancies**.

A fixed term tenancy is a tenancy with a specified beginning and end. For a example, a one year lease in effect from September 1 to August 31 has a clear beginning and end, and is therefore a one year fixed tenancy. All the rights and obligations under the lease are in effect for the entire one year period, unless the tenancy is terminated at an earlier date.

It should be noted that **The Landlord and Tenant Act** specifies precisely how tenancies are to be terminated. If a fixed term tenancy is not terminated in accordance with the Act, it will not expire; it will automatically be renewed as a monthly periodic tenancy under the same terms of the original lease. The **Termination of Tenancies** section of this guide ex-

plains these matters in more detail.

Periodic tenancies do not have fixed terms of duration; they are usually shorter term tenancies that are automatically renewed as the period expires. Therefore, month to month or weekly tenancies are usually periodic tenancies; however, daily or even yearly periodic tenancies are possible. Where there is no written agreement and the duration of the tenancy has not been expressly agreed upon, the length of each tenancy period is usually determined by the frequency of rental payments; for example, if the tenant pays rent each Friday, the tenancy will be a weekly periodic tenancy.

The notice requirements to terminate a periodic tenancy vary according to the length of each tenancy period. Unless notice to terminate and the other provisions relating to termination are met, the tenancy is continually renewed at the end of each rental payment period. ●

A) Rights and Obligations of Landlords and Tenants

1) Rights and Obligations under the Landlord and Tenant Act

The rights and obligations of landlords and tenants may arise from two sources: the tenancy agreement, which may take the form of a written lease or an oral agreement, or which may be implied from the circumstances; and **The Landlord and Tenant Act**. The most important of these rights and obligations are those imposed by legislation, because unlike promises or 'covenants' made by a landlord and tenant at the time the tenancy agreement is made, the rights and obligations arising from **The Landlord and Tenant Act** are absolute; they cannot be modified, even where the parties making the agreement may wish to do so. Therefore, to cite one example, a landlord's obligation to maintain and repair the premises remains in effect even though the tenant may have accepted the premises in a bad state of repair; the landlord is still subject to the penalties and other remedies available to ensure that these obligations are met. Also, where the Act confers a right on one party, a corresponding obligation is imposed on the other; for example, the right of a landlord to receive rent imposes an obligation on the tenant to pay rent.

The most basic rights and obligations arising from **The Landlord and Tenant Act** are those which at common law formed the very essence of a leasehold relationship: the right of a tenant to 'exclusive possession' and 'quiet enjoyment' of the premises, and the right of a landlord to receive rent. In addition, however, **The Landlord and Tenant Act** imposes a number of other obligations that were not recognized at common law. For example, s.96 imposes an obligation on the landlord to keep the premises in good repair for the duration of the tenancy; before the Act was passed,

the tenant accepted the premises as he found them, and was responsible for any repairs he felt were necessary or desirable.

Also, **The Landlord and Tenant Act** abolishes a common law remedy known as 'distress' or 'distrain', which used to allow a landlord to seize the property of a tenant who failed to pay his or her rent. The procedures and remedies available to deal with breaches or offenses under the Act are detailed below, but it should be noted that a landlord who seizes a tenant's property under any circumstances may be liable to a fine of \$2,000.

Finally, it should also be noted that **The Landlord and Tenant Act** introduces the contract law notion of 'frustration', which means that a landlord or tenant will not be held liable for the breach of an obligation that was impossible to perform. For example, if a residential building burns down through no one's fault, a landlord cannot be held responsible for breaching the obligation to transfer possession of the premises to the tenant because, since the premises no longer exist, it is physically impossible for the landlord to perform such an obligation.

The major rights and obligations imposed by **The Landlord and Tenant Act**-- exclusive possession and quiet enjoyment, the payment of rent, and maintenance and repair-- are the subject of this section of the guide.

a) Exclusive Possession and Quiet Enjoyment

When a landlord and tenant make a tenancy agreement or lease, 'exclusive possession' and 'quiet enjoyment' are two important rights transferred to the tenant for the duration of the tenancy. Essentially, these terms refer to the right of a tenant to make reasonable use of the premises, free from unlawful interference. This means that a tenant has the same right to privacy and freedom from nuisance as a homeowner, subject to certain very important rights retained by the landlord.

The first of these is the right of the landlord to enter the tenant's premises under certain conditions. The other is the right of the landlord to receive the premises in the same condition that they were in at the beginning of the tenancy, meaning that the tenant is not free to alter or damage the premises at will, apart from normal wear and tear. The tenant's right to exclusive possession and quiet enjoyment, and the limitations upon this right, can be divided into four areas.

(i) Privacy: S.93 of **The Landlord and Tenant Act** allows a landlord to enter the tenant's premises without giving notice in cases of emergency. Also, where a tenant has given notice that he or she is terminating the tenancy, the landlord may enter in order to show the premises to prospective tenants, so long as this takes place at 'reasonable hours', which will usually mean during daylight hours. A landlord may enter the tenant's premises for other reasons, but he or she must give notice in writing at least twenty-four hours before doing so; the notice must specify the exact time at which the landlord intends to enter, and this time must also be during

daylight hours. Finally, the landlord may enter at any time to which the tenant has given consent.

Of course, if a landlord has given notice or otherwise intends to enter the tenant's premises at a time which is inconvenient for the tenant, the tenant may refuse to allow the landlord to enter, but he or she should attempt to arrange another suitable time. Therefore, the right of a landlord to enter a tenant's apartment or flat is not necessarily absolute, but can be modified to meet the convenience of both parties.

If a landlord enters the tenant's premises under any other circumstances, he or she is trespassing, regardless of the fact that he may be the owner of the building. A landlord who breaches the tenant's right to privacy by unlawfully entering the tenant's premises is subject to a fine of up to \$2,000 upon summary conviction in County Court under s.108 of **The Landlord and Tenant Act**. If other injuries are suffered as a result of a landlord's trespass, a tenant may have the right to sue the landlord or seek other relief in addition to this fine.

Caretakers and superintendents of buildings are usually acting as agents of the landlord, and are therefore subject to the same restrictions that bind a landlord's right of entry. The tenant's right to privacy also extends to other persons, whether they are tenants, visitors to the building, or door-to-door salesmen. In the case of a trespass by these persons, however, the landlord is not usually responsible for the trespass, although he or she may be liable if his or her negligence contributed in some way to the damage suffered by a tenant. It should also be noted that in the case of a trespass by a person other than the landlord or agents of the landlord, legal steps are to be taken under **The Petty Trespass Act**, rather than **The Landlord and Tenant Act**. This law can be enforced by contacting the Hamilton Wentworth Regional Police or, in other communities, the local police force.

(ii) Political Canvassers: Another statutory protection relating to privacy and quiet enjoyment is found in s.94 of **The Landlord and Tenant Act**. This section prohibits landlords from denying 'reasonable access' to candidates or canvassers who wish to distribute political literature or solicit support during any federal, provincial, or municipal election, including elections to local school boards. A landlord who does not comply with this provision risks a maximum fine of \$2,000 upon summary in County Court under s.108.

(iii) The Changing of Locks: S.95 of **The Landlord and Tenant Act** prohibits both landlords and tenants from changing locks during the tenancy unless the other party's consent has been obtained. The major purpose of this section is to prevent one party from interfering with the other's right of access to the rented premises; therefore, locks, including night latches, can neither be changed nor added, unless the other party has consented and receives a copy of any new keys necessary to gain access to the premises. This provision applies to locks on the door of the tenant's apartment, locks

on laundry, locker, or other common facilities, as well as locks on doors giving entry to the residential building itself.

When, with the other party's consent, a lock is changed, the cost of the change will usually be borne by the party that requested or caused the change to be necessary. Therefore, to cite one example, if locks are changed because the tenant lost or had his or her keys stolen, the tenant may have to pay for the reasonable expenses of replacing the locking system.

If a landlord or tenant unlawfully changes or adds locks on doors in the building, a maximum fine of \$2,000 can be imposed upon summary conviction in County Court under s.108.

(iv) Freedom from other forms of Interference: S.107(4) of **The Landlord and Tenant Act** clearly prohibits the landlord from interfering with the tenant's normal use of the premises. The tenant is limited, however, in the uses he may make of the premises by certain rights retained by the landlord. The first of these is the right of the landlord to receive the premises at the end of the tenancy in the same condition that they were in at the beginning. This means that a tenant cannot cause any damage to the premises. If damage is caused by a tenant, he or she will pay for its repair, and may risk eviction if the damage was particularly serious or willfully caused, but the tenant is not responsible for the normal 'wear and tear' that can be expected merely by virtue of the premises being occupied.

Also, the tenant may require the permission of the landlord before making major structural alterations to the building or apartment. If the tenant does make improvements or in any way adds things to the premises, these things may become 'fixtures', permanent additions to the property of the landlord. Whether an article becomes a fixture depends on such factors as the way in which it was attached to the building, the way in which the article is normally used, and the intentions of the parties. For example, shelves attached to a wall with nails are probably meant to be permanent additions to the premises and will be considered to be fixtures, while bookcases that stand on the floor supported only by gravity are not permanent, and hence remain the property of the tenant. However, even if an article is a fixture, the tenant has the right to remove it as long as he or she restores the premises to the condition they were in at the beginning of the tenancy.

S.107(4) also guarantees a tenant's right to quiet enjoyment by prohibiting a landlord from cutting off or in any way interfering with the supply of vital services such as hydro or heating, whether or not the landlord provides these services. It should be noted that this applies even in cases where the tenant has failed to meet his or her own obligations under the legislation.

The tenant's right to make normal use of the premises is also protected by s.107(3), which prohibits a landlord from evicting a tenant merely because he or she sought to protect his or her legal rights through complaints to the authorities or membership in a tenants' association. Also, a tenant cannot be evicted merely because he or she has children. However,

because illegal or unsafe activities are legitimate grounds for eviction, some activities that are acceptable under certain conditions may be grounds for eviction in other circumstances: for example, if the occupation of the premises by the tenant's children causes overcrowding, or if the keeping of pets creates noise or a health hazard for other tenants, a landlord may apply under s.106 to terminate the tenancy and evict the tenant. However, it should be noted that eviction is not an automatic process; there are a number of requirements that must be met by the landlord. These requirements are discussed in more detail in another section of this guide, but one important point to note is that a tenant usually has a 'grace period' during which he or she may correct the situation that led to the landlord's action to evict.

b) The Payment of Rent

Another essential ingredient of leasehold law preserved in **The Landlord and Tenant Act** is the obligation of the tenant to pay rent to the landlord according to the terms and conditions set out in the lease or agreement. While the amount of rent and the dates on which it is due will vary from one tenancy to another, depending on such factors as the type of accommodation provided and on whether the tenancy is weekly, monthly, or yearly, the obligation to pay rent on time is an absolute obligation that a landlord can enforce at any time during the tenancy.

(i) Arrears of Rent: When a tenant fails to meet his or her obligation to pay rent on time, a landlord may apply under s.106 to a County Court judge for an order requiring the tenant to pay the amount of rent he or she owes to the landlord-- known as 'arrears of rent'-- either immediately or at a date set by the Court. This application is made, and the case is determined, by summary procedure.

(ii) Termination and Eviction: If a tenant has failed to pay rent, a landlord also has the option, in addition to or instead of an application for arrears, of giving the tenant a notice of termination specifying an effective date of termination not less than twenty days after the tenant receives notice. If the tenant pays the arrears within fourteen days of receiving this notice, the notice of termination is voided, meaning that the tenancy will continue on the same terms as before; however, if the tenant does not pay his outstanding rent within this fourteen day 'grace period', the landlord may then make a summary application to a County Court judge under s.106 for an order terminating the tenancy and evicting the tenant. Even in the case where a landlord has filed such an application, the tenant still has the opportunity to pay the arrears at any time before a final decision is made, and the proceedings against him or her will be stopped.

(iii) Withholding of Rent: One question that often arises in relation to the payment of rent is whether a tenant can withhold rent if a landlord does not

meet his or her obligations. In short, the answer is no. A tenant who, for whatever reason, does not meet the obligation to pay rent risks being taken to court by the landlord for arrears of rent, with the further risk that the tenancy will be terminated, and the tenant evicted. Although s.107 protects a tenant from eviction if the landlord is in breach of any obligations, and although the tenant will have the opportunity to explain to the court that rent was withheld because of the landlord's failure to meet his or her own obligations, a tenant who withholds rent will appear before the Court in a prejudicial light for having taken steps that are, strictly speaking, illegal. Also, a tenant who is attempting to make the landlord meet an obligation--for example, to repair some damage to the apartment-- must pay the rent into Court before the landlord will be ordered to remedy the breach.

Therefore, to be on the safe side, a tenant experiencing problems with a landlord should never withhold the payment of rent altogether. Instead, the tenant should make an application under s.96 in the case of matters relating to repairs and maintenance, or under s.106 in all other cases of breaches by a landlord. Both of these sections allow a tenant to apply for 'abatement of rent', the lowering of a tenant's rent either permanently or temporarily in compensation for the landlord's breach of obligation. The amount and type of abatement awarded will depend on such factors as the type and duration of the landlord's breach, as well as on the degree of loss or inconvenience experienced by the tenant.

In the case of a particularly serious breach by the landlord, a tenant may wish to apply for the termination of the tenancy, and take an apartment or flat somewhere else. An application to the Court for permission is required because in normal circumstances, when a tenant leaves the tenancy before the term or period of the lease has expired, the landlord is entitled to the rent remaining for the duration of the tenancy, or until a new tenant is found; this is not the case where a tenancy is terminated because a landlord failed to meet his or her obligations. The type of compensation a landlord can claim when a tenant 'abandons' the tenancy is discussed in more detail in another section of this guide.

A tenant making a summary application under either of these sections may also ask the judge hearing the application to allow the tenant to pay rent into court or into a special fund, rather than to the landlord, until the landlord corrects the situation that led to the application being made. This is very similar to withholding rent, but the difference is that it is done with the permission of the Court, and with special directions concerning what is to be done with the money. Normally the rent money will not be permanently withheld from the landlord; it will be only temporarily withheld to give the landlord an additional incentive to correct his breach. When the landlord has satisfied the Court that this has been done, the money collected will be turned over to him or her, subject to any amount subtracted through an abatement order. Judges nevertheless hesitate to order the payment of money into court in landlord and tenant matters however; they prefer that tenants should take the steps available under s.96 or s.106 to enforce their rights.

c) Repairs and Maintenance

(i) S.96 Obligations: A landlord is required to keep the entire residential premises 'fit for habitation' and in a 'good state of repair' for the duration of the tenancy, regardless of whether or not a tenant was aware of, or willing to accept, any damage or disrepair. This obligation, imposed by s.96 of **The Landlord and Tenant Act**, does not only apply to the apartments or flats being offered for rent, but extends to the maintenance of all areas of the residential building, including common areas such as roofs, hallways, laundry rooms, outdoor areas, and swimming pools and saunas, where provided. However, this obligation to maintain and repair the building does not extend to damage caused by the willful or negligent conduct of the tenant or the tenant's guests. Such damage is the responsibility of the tenant to repair, which usually means that although the landlord or superintendent will arrange to do the actual work, the tenant will be billed for these expenses. The tenant is also responsible for the 'ordinary cleanliness' of the apartment or unit being rented. Although terms like 'ordinary cleanliness' or 'good state of repair' are difficult to define with precision, these obligations can ordinarily be met through the exercise of courtesy and common sense.

S.96 also requires landlords to comply with all health, safety, and building standards by-laws. If a landlord breaches a by-law, he or she is not only liable to municipal authorities; a breach of a by-law is also a breach of s.96. The standards imposed by municipal by-laws in the Hamilton area, and the ways in which these standards are enforced, are dealt with more fully in a separate section of this guide.

(ii) Remedies under s.96: The obligations relating to repair and maintenance can be enforced under s.96 through summary application to a judge of the County Court. The remedies under this section of **The Landlord and Tenant Act** are available to both landlords and tenants, but since the major obligations are imposed on landlords, these remedies tend to be most often used by tenants.

One remedy available when a landlord or tenant has not met his or her obligations under s.96 is to apply to the court for termination of the tenancy. A landlord may apply to evict the tenant, but a number of requirements, discussed more fully in the **Termination** section of this chapter, must be met before an eviction order will be granted.

In addition to, or instead of termination, the judge hearing the application also has the authority to order the responsible party to make any repairs necessary. If the person ordered to make such repairs does not do so, he or she may be in contempt of court, and risks a fine or possible jail sentence. However, because most parties to landlord and tenant trials are not represented by lawyers but by 'agents' specializing only in this one area of law, most judges hesitate to apply as harsh a sentence as a jail term in these cases.

S.96 also gives a County Court judge the authority to compensate a tenant for doing repairs that the landlord failed to do. However, a tenant should do repairs that are normally the responsibility of the landlord only in emergency situations, because compensation will only be awarded if it can be proven that the repairs were immediately necessary and that the landlord failed to do them. If a tenant cannot prove these things, no compensation will be awarded because it is normally up to the landlord to decide how and when repairs are to be done, and by doing them himself or herself, the tenant was infringing on the rights of the landlord. When an emergency exists-- for example, where the door to the tenant's apartment is broken, or where faulty plumbing is flooding the tenant's premises-- and the landlord cannot be reached or refuses to do the work, the tenant may make the necessary repairs, but he or she is well advised to keep all receipts or records as evidence in case the landlord refuses to pay, and a trial is necessary.

Finally, a County Court judge hearing an application under s.96 has the additional authority to make whatever other order he or she feels is necessary or appropriate in the circumstances. Essentially, this gives the judge the power to make orders similar to those under s.106, such as rent abatement or eviction, depending on such factors as who was responsible for causing the damage, or the length of time that passed before the damage was repaired. Therefore the type of order, if any, made under this section will vary from case to case. The advantage of giving this discretionary power to a judge under s.96 is that problems relating to repair can be solved more quickly with one application to the court, instead of additional applications for abatement or eviction having to be made under s.106 as well.

2) Rights and Obligations under a Lease

Aside from those imposed by legislation, other rights and obligations can arise from the tenancy agreement or lease created by the parties themselves. However, any provisions in the lease conflicting with **The Landlord and Tenant Act** are voided and unenforceable.

Apart from this limitation, a landlord and tenant making a lease are free to negotiate and include whatever clauses they wish. The most common clauses relate to such matters as the keeping of pets, the use of parking and laundry facilities, and hours after which guests must leave. These clauses must be viewed as promises or terms in a contract and are enforceable as such, but because of the high costs of enforcing such a contract in Supreme Court, it is rare that a landlord or tenant will take this route to enforce a lease.

The terms of the lease are more easily enforceable under s.89 of the Act, which makes material covenants interdependent. This means that if one party breaks a promise in a lease, the other party is no longer required to meet his or her corresponding obligation. However, it is important to

note that this only applies to provisions in the lease, and not to obligations that are imposed by **The Landlord and Tenant Act**; the obligations under the Act, such as the obligation to pay rent or to repair the premises, are absolute, and must be met throughout the duration of the tenancy even if the other party breaches an obligation. For example, if a lease specifies that a tenant is not allowed to keep pets, and the tenant breaches this provision, the landlord is allowed to withhold a corresponding promise, such as a promise to do extra painting. It should be noted that the breach of a clause contained in a lease is not, on its own, grounds for eviction; the eviction of a tenant can only be carried out in accordance with s.103 of **The Landlord and Tenant Act** (see **Termination of Tenancies**, below). Also, the promise withheld in retaliation for a breach of the lease by the other party cannot be one of the absolute obligations imposed by the Act; to return to the example above, if the painting withheld by the landlord was not 'extra' but was in fact necessary, the landlord could not withhold this promise because to do so would be a breach of the s.96 obligation to repair and maintain the premises. ●

B) Enforcing Your Rights: County Court Procedure

Many landlords and tenants hesitate to enforce their rights under **The Landlord and Tenant Act** because they are uncertain about the procedures to be followed and the costs involved when making summary applications to County Court. While this often encourages landlords and tenants to work out their difficulties through negotiation and cooperation rather than litigation, it also has the unfortunate effect of leaving many problems unsolved. This section of our guide will outline some of the basic steps involved with County Court applications under landlord and tenant law.

1) Initiating the Proceedings

The party that makes the application begins the proceedings and is known as the 'plaintiff'. The party against whom the application is brought is known as the 'respondent'. The proceedings themselves are generally referred to as a 'motion'.

The proceedings are commenced through a 'notice of motion'. This document, available from the County Court Clerk's office, contains information concerning the date, time, and place of the trial, and is served on the respondent in order to allow him or her to prepare a defense. The notice of motion must be accompanied by a signed statement called an 'affidavit' which sets out the 'particulars' or details of the plaintiff's complaint. The affidavit is meant to give both the respondent and the trial judge a preview of the issues to be decided at trial; therefore, the affidavit must

contain detailed information explaining the nature of the problem that gave rise to the motion. For example, if a landlord is seeking to evict a tenant on the grounds that the tenant's pets pose a health hazard to other tenants, the affidavit should give the names of tenants being affected by the pet, and explain what the undesirable effect is-- for example, explaining how other tenants are suffering allergic reactions to the pet. The affidavit should also make it clear that the problem is continuing, and it should set out what relief, or, in other words, what solution, is being sought from the court. It is not enough to make general statements alone. If the notice of motion or the affidavit accompanying it does not contain sufficient detail, the motion may be dismissed for lack of evidence.

The affidavit accompanying a motion by a landlord for a writ of possession to evict a tenant is a special case that must meet other requirements in addition to those explained above. Before a landlord can serve the tenant with a notice of motion, he or she must first have served the tenant with valid notice of termination. The notice of termination must comply with the provisions in s.103 of **The Landlord and Tenant Act** relating to valid reasons for termination, or 'cause', and the timing of the notice (these requirements are discussed more fully in **Termination of Tenancies**). The notice of termination must also meet the formal requirements of s.99 of the Act: it must identify the premises to which the notice of termination relates, specify the date of termination, and explain, in detail, the reasons for the termination. Finally, the notice of termination must inform the tenant that while he or she is not obliged to leave the premises immediately, the landlord may regain possession by applying for a writ of possession. The notice of termination must also inform the tenant that he or she may dispute the application for a writ of possession. If any of these requirements are not met, the notice of termination is invalid, and a writ of possession will not be issued unless a valid notice of termination has first been served.

Even where the notice of termination is valid, a landlord seeking a writ of possession must first wait for the tenant's breach to continue beyond the expiry of the 'grace period'-- the period of time in which a tenant may correct the situation that led to the notice of termination. No writ of possession will be issued before then. This information concerning the continuation of the breach beyond the grace period must also be included in the affidavit that accompanies the notice of motion. If these requirements have not all been met, no writ of possession will be issued; even if the case goes before a judge, the case will be dismissed for lack of evidence. However, it is up to the respondent-- in this case, the tenant-- to point out any mistakes or deficiencies in the notice of termination, the notice of motion, or the affidavit. If the tenant fails to point out errors in the way in which the landlord has brought the application, the judge may assume that the various requirements have been met, and allow the landlord to evict the tenant.

2) The Trial

At trial, a landlord and tenant involved in a dispute put forward evidence and arguments before a judge who makes a decision according to the options available under **The Landlord and Tenant Act**. In Hamilton, landlord and tenant cases are tried on Wednesday mornings. Although the notice of motion specifies that trials begin at 10:00 a.m., they usually do not get under way until 10:30; this half hour interval is valuable time used by representatives and agents for negotiation and bargaining.

The judge will begin by calling out the names of the parties involved in the trials and first deal with requests for adjournments. A representative or agent of a landlord or tenant can ask for, and usually receive, a one week adjournment if he or she did not have sufficient time to prepare the case, but the other side should be notified of this to minimize the risk of an adverse cost order for delaying the proceedings.

As the judge calls out the names involved in each case, he or she will ask if the case is being disputed. If so, it will be set down for trial later in the morning. If the case is not being disputed, it may be decided immediately, or it too may be set down for a later decision. The time at which the trial will actually take place depends on such factors as the number of cases to be heard and the number of judges available, but the parties should stay in the courtroom at all times; if one of the parties misses the trial, a 'default judgement' against him or her will be handed down as a penalty for failing to appear.

Parties to landlord and tenant proceedings do not have to be represented by lawyers; they may appoint agents to act on their behalf, or they may appear on their own behalf. Persons who cannot afford the high price of legal counsel are often represented by community legal workers or other trained persons. Some of these community organizations are listed in the directory at the back of this guide.

Respect should be shown in courtroom dress and behaviour. Clothing should be neat and sober, bordering on the conservative. Loud, flashy outfits may be fine for a night on the town, but have no place in a court of law; judges also view blue jeans, T-shirts, or halter tops with disfavour. Landlords and tenants should avoid the risk of incurring a judge's disfavour by dressing for court as they would for an important business meeting or job interview.

a) Preliminary Motions

When the parties' names are called to begin the actual trial, the judge will first deal with preliminary motions. Preliminary motions or objections involve such matters as requests to dismiss the case because of insufficient evidence or because the court lacks jurisdiction. When a preliminary objection has been raised, the judge has the option to uphold the objection and dismiss the case, or deny the objection and go on to decide the case on its merits. In some cases, a judge will prefer to hear the case first and rule on

the preliminary motion afterwards; for example, if a motion is made to dismiss the case for lack of evidence, the judge may wish to first hear the evidence available before deciding whether or not it is sufficient to justify a trial. At this point the judge will also be in a position to decide the case itself should he or she strike down the preliminary objection.

b) Evidence and Argument

When preliminary motions have been dealt with, the parties to the trial are given the opportunity to present evidence and arguments in support of their respective positions. Because the plaintiff is the person who initiated the motion, he or she must prove his or her case first. The plaintiff may enter 'affidavits' or documents as evidence in support of the application, but oral evidence is generally regarded as the strongest type of evidence that may be introduced into court because it gives the other party a chance to 'cross-examine' or ask questions of witnesses. The evidence presented must support the allegations made in the notice of motion, proving that the other party breached **The Landlord and Tenant Act**. Therefore, for the plaintiff to win his or her case, all the requirements set out in the relevant provisions of the Act must be met. These various requirements are discussed in the **Rights and Obligations of Landlords and Tenants** section of this guide.

When the plaintiff has presented all of his or her evidence, the respondent is given a chance to answer to the plaintiff's charges. If the respondent feels that the plaintiff has not proven the allegations made in the notice of motion, he or she may move to dismiss the case on the grounds that no evidence was presented to show a breach of the Act. The respondent also has the option of presenting his or her own evidence, and then asking for a dismissal on the grounds that while the plaintiff introduced some evidence of a breach, it was not sufficient in light of the respondent's evidence to conclusively prove that a breach occurred.

If the case is not dismissed on these grounds, the plaintiff and the respondent are given the opportunity to cross-examine each other's witnesses and raise doubts about the evidence introduced. In addition to the lawyers or agents of the plaintiffs and respondents, the judge hearing the case may also wish to ask questions. Witnesses should speak clearly and keep their answers brief, only answering the questions asked of them.

When both sides have been heard, the parties briefly sum up their cases. Usually the respondent makes the first summation. Any 'secondary objections'-- such as a legal justification for the act alleged by the plaintiff-- are raised at this point as well. The summary itself is very brief, highlighting strongpoints of one's own argument, and emphasizing weaknesses in the other side's.

c) The Decision

In most cases, a decision can be given immediately after both parties

have made their summations. The judge weighs the evidence and arguments he has heard and makes an appropriate order in accordance with the relevant section of the Act, such as eviction, rent abatement, or termination of the tenancy. In some cases, particularly where important case law has been cited, the judge may set a later date for the decision, and give written reasons at that time.

If the respondent did not appear for trial and a default judgement is given, the respondent has seven days from the date of the judgement to make what is known as an **ex parte motion** explaining the reason for the failure to appear. If the judge hearing this motion believes that the respondent had a good explanation for missing the trial, and that the respondent's case has merits-- in other words, that the respondent's defence may be valid and deserves to be heard-- the default decision may be set aside, and a new trial may be ordered.

In most circumstances, 'costs' will be awarded to the winner. Usually the amount will cover the expenses of the action itself, but costs are not usually awarded to cover lawyers' fees. In most landlord and tenant cases, costs range between \$15 and \$20. In other cases, higher costs, or no costs at all are also awarded. ●

C) Subletting and Assignment

A lease or a tenancy agreement is negotiable until the time it is signed, but once in effect, it is a binding contract between a landlord and a tenant. Many leases or agreements are made for lengthy periods of a year or longer. This often creates a problem for tenants who sign a long term lease but require the use of the premises for a shorter period of time than that specified in the agreement, because obligations such as the payment of rent continue to be in effect for the duration of the tenancy, and not merely for the time that the tenant is in actual possession of the premises. In other words, the tenant continues to be responsible for paying rent even though he or she may no longer live in the apartment or flat being rented. In some cases, where the landlord and the tenant agree to an early termination of the tenancy, this problem can be solved easily and without any penalty for the tenant. However, as will be explained in the **Termination of Tenancies** section of our guide, a landlord may demand a fee before releasing the tenant of his or her obligations. A tenant who wishes to avoid this problem while still giving up possession of the premises has an additional option: he or she may keep the lease or agreement in force, but transfer possession to another party. Depending on the way in which this is done, this practice is known as 'subletting' or 'assignment'.

1) Subletting

Usually, when a tenant sublets, possession of the rented premises is

transferred to another person-- known as the 'sub-tenant'-- for a temporary period, such as where a student with a one year lease may sublet for the summer months but come back in September and regain possession before the original lease expires. The tenant is not, however, obliged to return to the premises; the subtenancy may continue to the end of the original lease.

Because the original lease or agreement between the landlord and the tenant continues to be in effect when the premises are sublet, the original tenant remains liable to the landlord for rent and all the other obligations under **The Landlord and Tenant Act** and the tenancy agreement. Therefore, even though the sub-tenant may pay rent directly to the landlord, and even though the original tenant no longer lives in the premises, the tenant will be responsible to the landlord if the sub-tenant fails to pay the rent or willfully damages the premises.

In addition to being liable to the landlord for the sub-tenant's obligations, the original tenant is also liable to the sub-tenant for the obligations of the landlord; in effect, the original tenant becomes the sub-tenant's landlord. Therefore, a tenant is in the vulnerable position where he or she may be held liable for the actions of both the landlord and the sub-tenant. One way in which the tenant may protect himself or herself is by ensuring, wherever possible, that the landlord and the sub-tenant meet all the responsibilities imposed by law. Another way to achieve some degree of protection is by entering into an agreement called a 'contract for indemnification' under which the landlord or sub-tenant agrees to indemnify or repay the tenant for expenses he or she incurs as a result of the other party's breach of obligation. This agreement is enforceable as a contract in Small Claims or County Court.

If a tenant is taken to court by a landlord or sub-tenant for a breach of obligation caused by one of the other parties, he or she should file a 'third party claim' against the person actually responsible. When such a claim has been filed, if the court finds that a breach did indeed occur, the tenant will be held liable in a technical sense, but he or she will be entitled to recover any damages or penalties levied by the court from the party who was actually responsible for the breach.

2) Assignment

If a tenant wishes to give up possession of the premises without incurring the risks associated with subletting, he or she may wish to 'assign' the tenancy. In an assignment, the original lease also remains in effect, but the tenant parts with possession of the premises for the entire period remaining under the agreement; in effect, the tenant sells his or her remaining interest in the tenancy to another person known as the 'assignee'. The transfer of possession in an assignment is therefore permanent, and the tenant is not entitled to regain possession.

An assignment is very similar to a new lease between the landlord and the assignee. The assignee and the landlord become liable to each other

for all obligations under **The Landlord and Tenant Act** and under the original lease; the original tenant, on the other hand, is completely freed of all these obligations.

3) Landlord's Consent

Because the original lease between the tenant and the landlord is not terminated, a tenant who sub-lets or assigns can give up possession of the premises without paying the penalties usually associated with breaking a lease (these penalties are discussed below under the heading **Termination of Tenancies**). Questions often arise, however, as to whether the landlord's consent is required before a tenant can sublet or assign, and whether the landlord can charge a fee for giving consent. S.91 of **The Landlord and Tenant Act** states that a tenant requires a landlord's consent only where a clause to that effect appears in the lease or tenancy agreement. If no such clause appears, the consent of the landlord is not required. However, even where such a clause is included, the landlord is prohibited from 'arbitrarily or unreasonably' withholding his or her consent to sublet or assign. Also, the landlord is forbidden to charge a fee for giving consent, except to recover any 'reasonable costs' incurred as a result of the transfer of possession from the tenant to the sub-tenant or assignee. If a tenant feels that a landlord is unreasonably withholding permission to sublet or assign, or that the landlord is charging an unreasonable fee for this permission, he or she may make a summary application under s.91(5) of the Act to settle this dispute before a County Court judge. ●

D) Termination of Tenancies

1) Introduction

The following section deals with the reasons which justify the termination of a tenancy by either a landlord or tenant, before or at the end of an agreed period of tenancy, as well as the procedures which must be followed.

As stated in **The Landlord and Tenant Act**, a tenancy can no longer run out and expire. Rather, if the tenancy arrives at the end of the agreed period, the tenancy must continue on a month-to-month basis until both parties agree to another term, or be terminated. A tenancy may be terminated by either landlord or tenant, before at the end of an agreed period of tenancy. The tenant can terminate the tenancy providing that consent is given by the landlord and proper notice requirements have been met; the landlord on the other hand, cannot terminate the tenancy either before or at the end of an agreed period of tenancy unless the reasons for termination correspond with the legitimate reasons outlined in **The Landlord and Tenant Act**.

2) Termination by the Tenant

(a) Early Termination by the Tenant:

(i) **'Breaking the Lease'**: When a landlord and tenant sign a lease or make a tenancy agreement, they enter into a binding contract. The obligations imposed by the lease and by **The Landlord and Tenant Act** are in effect until the tenancy is terminated, regardless of such factors as whether or not the tenant continues to live in the apartment or flat he or she originally agreed to rent. As was noted in the previous section, this can create a problem for tenants who for one reason or another wish to give up possession of the premises before the agreement or lease has expired. One solution to this problem is to terminate the tenancy.

The tenancy may be terminated at any time by mutual consent of the parties. If a tenant gives the landlord reasonable notice, some landlords will allow a tenant to move out before the expiry of the lease without incurring any penalty.

If the landlord does not agree to terminate the tenancy in this manner, he or she cannot prevent the tenant from moving out before the tenancy has expired (known as 'abandoning' the tenancy, or 'breaking the lease'). However, if the tenant does so, the lease or tenancy agreement remains in effect, and the landlord has the right to demand that the tenant keep paying rent for the remainder of time specified in the lease, until the premises are occupied by a new tenant, sub-tenant, or assignee. The landlord may also be entitled to costs that he or she can prove resulted from the tenant's abandonment of the premises.

It should be noted, however, that s.92 of **The Landlord and Tenant Act** imposes a duty on the landlord to 'mitigate his damages'. This means that the landlord must make every attempt to minimize the losses he or she suffers as a result of the tenant having broken the lease. Therefore a tenant will not be liable for losses that a landlord could have avoided by taking reasonable steps. This means that a landlord cannot, for example, turn down applications by prospective tenants on flimsy grounds simply because he or she knows that the original tenant will continue to be responsible for paying rent.

Often a landlord will agree to effectively terminate the tenancy by releasing the tenant of all obligations in exchange for the payment of a lump sum of money, usually between \$50 and \$200. Such an agreement is perfectly valid, but it should be noted that the landlord is only entitled to costs that are reasonable, taking into account the landlord's duty to minimize damages. A tenant who feels that the amount sought by the landlord does not accurately represent the rent owing or the costs of finding a new tenant may apply to the court under s.91(4) to require the landlord to justify the amount he is seeking. In most cases, however, the fee sought by the landlord will be quite reasonable, considering the risk of a potentially higher amount of damages if no one is found to occupy the premises abandoned by the tenant. Of course, if a tenant pays such a fee,

he or she should ensure that the agreement to release the tenant is in writing and signed by the landlord.

Occasionally, a tenancy agreement or lease will contain a clause specifying that if a tenant abandons the tenancy, the rent for the full term of the tenancy becomes immediately due. For example, in the case of a one year lease, a tenant who breaks the lease after two months would have to immediately pay the entire amount of rent owing for the ten months remaining. Such a clause, known as a 'forfeiture clause', is now illegal, because, as was noted above, the landlord's right to the remaining rent is not automatic, but limited by a duty to mitigate or minimize damages. If such a clause appears in a lease, a tenant may apply to County Court under section 106 of **The Landlord and Tenant Act** for an order requiring the landlord to pay back any amount of money collected in this manner.

A tenant who has paid a security deposit should ensure that the deposit is applied only to pay the rent for the last month of the tenancy. Therefore, when a tenant plans to abandon the tenancy and the last month's rent becomes due, he or she should tell the landlord to apply the deposit to the rent, instead of paying the rent and using the deposit to cover the fee for the release of obligations. In this way, the tenant removes the risk of the landlord abusing his or her right to damages by, for example, keeping more than he or she is due, and provides an incentive for the landlord to mitigate the losses he or she suffers. If a tenant feels that a landlord is unfairly keeping the security deposit, he or she may file a summary application to County Court under s.106 of the Act for an order forcing the landlord to return any amount he or she was not justified in keeping.

(ii) Termination for Landlord's Breach of Obligation: A tenant has the right to apply for an early termination of the tenancy if a landlord breaches an obligation imposed by **The Landlord and Tenant Act**. Briefly, these obligations relate to 'exclusive possession' and 'quiet enjoyment'-- the tenant's right to privacy and freedom from unlawful interference-- and to maintenance and repair, and are discussed in more detail under the heading **Rights and Obligations under The Landlord and Tenant Act**.

A tenant who wishes to terminate a tenancy because the landlord failed to properly maintain or repair the apartment should make an application under s.96 of **The Landlord and Tenant Act**. The judge hearing an application under this section has the authority to make other orders, such as an order compensating the tenant for any loss or inconvenience resulting from the landlord's breach of this obligation, in addition to or instead of the termination order. In the case of a landlord breaching an obligation other than that to repair and maintain the premises, the application for termination should be brought under s.106.

When a tenancy is terminated in this manner, the landlord is the party responsible for the termination, and therefore he or she is not entitled to any compensation or further rent payments. If the tenant gave the landlord

a security deposit, this amount can only be applied to the last month's rent; if the last month's rent was paid before the tenancy was terminated, the tenant is entitled to the return of this sum.

(b) Termination by the Tenant at the End of the Rental Period:

The tenant may terminate the tenancy at the end of the agreed period of tenancy providing that the notice requirements which are set out in the **The Landlord and Tenant Act** are adhered to.

The following notice requirements must be met by both landlords and tenants:

A notice to terminate a tenancy must be in writing. This applies to all types of tenancies i.e. weekly, monthly, yearly or a fixed term of either a written, implied or oral agreement. If both parties should agree to terminate the tenancy on a predetermined date, in writing, an official notice of termination is not necessary; however, this would be the only exception.

The issuing of a notice of termination by either landlord or tenant is dependent on the type of tenancy agreement made. For a weekly tenancy, the notice must not be given less than 28 days before the last day of the tenancy; not less than 60 days for a monthly tenancy; and not less than 60 days for a yearly or fixed term tenancy. If any of the above notices are late, the notice becomes legally ineffective and the whole process must be repeated in order to be legally binding.

Aside from being in writing, the notice must also identify the premises in question; specify the date on which the premises should be vacated; and must also be signed by the notice giver. In addition, the notice giver is responsible to make sure that the notice is received by the proper person or persons. In the case where the tenant is the one giving the notice to the landlord, the tenant must deliver the notice personally to the landlord, or to his or her agent, or mail it. The notice does not have to be delivered by registered mail, for the law takes into consideration that the notice will be delivered the third day after the date of mailing.

(3) Termination by the Landlord

(a) Cause, Notice and Enforcement of Early Termination by the Landlord:

A landlord may terminate a tenancy before the end of the agreed period of tenancy providing that the following situations as set out in s.103 of **The Landlord and Tenant Act** apply. It is important to note that the notice format should follow the format which has been outlined in section 2(b) above. Aside from these basic requirements of a notice of termination, the landlord must also take into account any changes or additional information which must be included in the notice of termination corresponding

to the particular reason for termination. The landlord is required to list the reason or reasons respecting the termination as well as a statement which advises the tenant that he or she need not vacate the premises before the effective date of the notice. The landlord must also inform the tenant of any intention to apply for a writ of possession (which the tenant is entitled to dispute).

Once the proper notice requirements have been met and the notice completed, the landlord must ensure that the notice is delivered to the tenant personally. In the case where the tenant is away from home, the landlord may give the notice to a person apparently over 18 years of age on the tenant's premises, or post up the notice in a conspicuous place on the rented premises. It can be sent by registered mail or by normal mail services for the law assumes delivery on the third day after mailing.

(i) Failure to Pay Rent: If a tenant fails to pay rent when it is due, landlord may give notice of termination specifying a termination date not less than 20 days after the notice is given. This notice must specify the right of the tenant to pay late rent within 14 days of the receipt of the notice. If this time allowance should pass without payment by the tenant, the landlord is entitled to apply for a writ of possession under section 106 of **The Landlord and Tenant Act**. However, the tenant is also given additional time to pay any arrears of rent plus court costs as well as a normal filing fee of \$10 and the cost of the sheriff's servicing of the papers, before judgement is made final. If the tenant pays within the 14 day allowance or before judgement is made final, the termination notice becomes ineffective.

(ii) Undue Damage: If a tenant, or any of his or her guests, cause undue damage, wilfully or negligently to the rented premises.

(iii) Interfere with "Reasonable Enjoyment": If a tenant, or his or her guest, substantially interfere with the "reasonable enjoyment" or impair the safety or rights of any of the other occupants of the premises.

(iv) Enfringement of Health and Property By-Laws: If a tenant infringes any health and/or safety standards i.e. overcrowding etc. (see **Health and Property Standards**).

Should (ii), (iii), (iv) apply, the landlord must give the tenant notice of termination to be effective not less than 20 days after the notice is given. This notice must also inform the tenant that if he or she remedies the situation and satisfies the landlord that the problem is corrected within 7 days after receiving the notice, the notice is ineffective. If 7 days should pass without restitution by the tenant, the landlord may apply to a county court for a writ of possession. Eviction procedures can only be carried out after the court judge grants the landlord a writ of possession.

(v) Illegal Acts: If a tenant performs, or allows the commission of an illegal act on the premises.

(vi) Subsidized housing: If a tenant who is living in a subsidized or public housing unit, knowingly misrepresents his or her income or that of any other member of his or her immediate family.

Should (v) or (vi) apply, the landlord must give notice to be effective at least 20 days after the notice is given.

(b) Causes, Notice and Enforcement of Termination by the Landlord at the End of a Rental Period:

The Landlord and Tenant Act recognizes certain reasons for the justification of termination of a tenancy at the end of a rental period; in addition, the landlord is justified in terminating a tenancy at the end of a rental period for the same reasons which apply for an early termination.

The cited reasons which specifically apply for termination by the landlord at the end of a rental period are as follows:

(i) Renovation, Demolition or Conversion: The landlord may terminate a tenancy at the end of a rental period for purposes of renovation, demolition or conversion providing that the landlord has given the tenant 120 days notice before the end of the tenancy period.

If the tenant receives a notice for this reason, he or she has several options: the tenant may comply; the tenant may vacate the premises before the end of the tenancy period as long as he or she gives the landlord 10 days written notice; or the tenant may go to court to require the landlord to prove that the claim is a valid one.

It is also important to note that the tenant has a 'right of first refusal'. This right gives the tenant first choice to re-occupy the premises, but a written statement to this effect must be signed by the landlord. It is up to the tenant to secure this right by informing the landlord of any change of address. If the tenant should re-occupy the premises following renovation, the tenant is entitled to pay rent similar to the rent which would be charged to any other tenant of the premises.

(ii) Landlord Requires the Premises for Personal Use: The landlord may terminate a tenancy at the end of a rental period if he or she requires the premises for personal use by himself or herself or an immediate member of the family. If a landlord wishes to terminate a tenancy for this reason, 60 days notice is required before the end of the rental period.

(ii) Persistently Late Payment of Rent: If the tenant has persistently failed to pay rent when rent is due, the landlord is justified in terminating the

tenancy at the end of the rental period.

(iv) Employment Has Ended: If a tenant has been provided with the premises under the terms of his or her employment, for example, as a caretaker, the landlord must give proper notice of termination pursuant to the **Employment Standards Act**, which entitles the tenant to one rent free week following the end of a proper notice of termination.

(v) Subsidized Housing Units or Condominium Owners: If a subsidized housing unit is involved, a landlord may terminate a tenancy at the end of a rental period if the tenant ceases to qualify for subsidized housing occupation stipulations.

Where a condominium is concerned, the tenancy can be terminated by the landlord at the end of a rental period if the tenancy arose by virtue of an agreement to purchase a condominium unit, and the agreement has fallen through.

For all the above reasons which justify termination by the landlord at the end of the rental period, the landlord may apply to the court for an eviction order to be effective after the notice period expires. If there has been a mutual written consent by both landlord and tenant to terminate the tenancy on a certain date then the landlord can enforce the agreement by directly applying for an eviction order.

(4) Overholding Tenancy:

Once the tenancy has been terminated by proper notice requirements, and the tenant has proceeded to stay on past the effective date of termination, the tenancy becomes an Overholding tenancy.

The Landlord and Tenant Act specifies that once the tenancy has been terminated by proper notice, a landlord is entitled to compensation for the use and occupation of the premises by any overholding tenant. Due to the fact that a notice of termination is void unless the tenant leaves the premises, the overholding tenant can remain as such until termination can be enforced by the landlord. Enforcement of termination can be obtained by the landlord through an application for an order of eviction to the County court within 30 days after the effective date of termination specified in the notice. If the landlord does not apply nor does the tenant move after the effective date of termination, the tenancy can continue as a periodic tenancy until both parties agree to another term or until effective termination can be obtained.

If during an overholding tenancy, the tenant pays any arrears of rent or compensation to the landlord, this does not mean that the tenancy has been reinstated unless both parties so agree. Any party who claims that the tenancy has been reinstated without mutual agreement has the burden of producing proof to that effect. In the case where the tenant is overholding and refuses to pay compensation to the landlord, eviction and compensa-

tion may be enforced through application to the court under provisions of section 106 of **The Landlord and Tenant Act**. ■

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Rent Review

A) Introduction

Rent Review is a process by which rent increases for certain types of residential premises are generally limited to 6 percent; proposed increases above 6 percent are permitted, but they must be reviewed in order to judge whether they are justified. This process is mandatory; it is governed by provincial statute and has been Ontario law since 1975. Furthermore, this control applies to landlords and tenants regardless of any individual agreements which they may have made to the contrary. In other words, the Act can override any agreements which conflict with the Act.

Before the enactment of **The Residential Tenancies Act, 1979**, rent control was governed by the **Residential Premises Rent Review Act**, and the legal relationship between landlords and tenants of residential premises was governed by Part IV of the **Landlord and Tenant Act**; **The Residential Tenancies Act** was originally intended to combine them and provide one comprehensive piece of legislation covering all aspects of the legal relationship between the landlord and the tenant of a residential premises. However, the new act also sought to establish a Commission with the power to hear and make judgements not only on proposed rent increases above the permissible 6 percent, but also on all areas of conflict between landlords and tenants. In other words, the Residential Tenancy Commission would assume a quasi-judicial role in the consideration of problems that previously had to be resolved through the Courts. The legal status of this element of Bill 163 has been referred to the Ontario Court of Appeal; a decision is expected in October, and the implementation of any subsequent legislation will occur probably during the summer of 1981. Consequently, only those sections of **The Residential Tenancies Act** which deal with rent control have been enacted; all other areas of landlord-tenant law still fall under the jurisdiction of the **Landlord and Tenant Act**.

The details of rent review and the function and operation of the Residential Tenancy Commission can be found in Parts XI and VIII, respectively, of the **Residential Tenancies Act**. This chapter provides an outline of the important elements of Ontario's current rent control law. The first section lists those forms of rental accommodation which have been ex-

empted from the legislation. ●

B) Exemptions

1) Exemptions from Residential Tenancies Act

S.4 of the introduction to the Act specifically exempts the following 'living accommodations' from the entire Act (i.e., in addition to being exempted from rent control, a 90-day notice of a proposed rent increase is not required for the following premises.)

- living accommodation in a hotel, motel, inn, tourist home, hostel or other similarly transient accommodation
- living accommodation occupied as a vacation home for a seasonal or temporary period
- living accommodation provided for farm workers, where occupancy requires continuing employment at the farm
- living accommodation provided by a non-profit co-operative housing corporation to its members
- living accommodation provided for penal, correctional, rehabilitative, or therapeutic reasons
- living accommodation provided for temporary, emergency shelter
- living accommodation in a hospital, nursing home, or a home for the aged
- living accommodation provided by an educational institution to its students or staff where,

- i) it is provided primarily to persons under the age of majority, or
- ii) all major questions related to the living accommodation are decided after consultation with a council or association representing the residents,

unless the living accommodation has its own self-contained bathroom and kitchen facilities and is intended for year-round occupation by full-time students or staff and members of their households

(See the section **University Residences** for a detailed discussion of a particular application of this clause.)

- living accommodation in a building or project used in whole or in part for non-residential purposes where the occupancy is necessarily connected with the employment of the occupant
- premises occupied for business or agricultural purposes with living accommodation attached under a single lease unless the occupant is not involved in the business

2) Exemptions from Rent Review

Not all residential rental premises that are covered by the **Residential Tenancies Act** are subject to the section on Rent Review. Before discussing the basic regulations of Part XI which govern Rent Review, it would be appropriate to list here all forms of 'rental unit' which have been specifically exempted from rent control under s. 134 of Part XI.

(It should be noted, here, that there is one important regulation in the Act which does apply to all forms of rental unit, except, of course, those units listed in the preceding section. This regulation is s.60; it requires landlords to provide a 90-day notice of an intended rent increase regardless of whether the increase is more or less than 6 percent.)

- rental units in a residential building that is owned, operated or administered by the federal, provincial or municipal government (or their agencies)
- rental units in non-profit housing projects where rents are subject to the approval of the federal, provincial or municipal government (or their agencies)
- rental units in non-profit co-operative housing projects as defined in the National Housing Act
- rental units in a building, no part of which was occupied as a rental unit before Jan. 1, 1976
- rental units that are mobile homes or mobile home sites which were not occupied as a rental unit before Jan. 1, 1976
- rental units in buildings owned, operated, or administered by religious institutions for charitable purposes on a non-profit basis
- rental units provided by educational institutions with self-contained bathrooms and kitchen facilities that are intended for year-round occupation by full-time students or staff **if** there has been consultation regarding a rent increase with a council or association representing the students
- rental units where the monthly rent is \$750 or more

In addition, where a tenant receives a rent subsidy in a privately owned rental building, Rent Review applies to the overall rent the landlord may charge for the unit, but not to the portion of rent paid by the subsidized tenant. ●

C) The Residential Tenancy Commission

The Residential Tenancy Commission was established by Part VIII of **The Residential Tenancies Act, 1979** in order to administer the regulations concerning rent increases as set out in Part XI of the Act. The pro-

cedure of the Commission and the correct way of making applications and notice are outlined in Part IX of the Act.

The Commission has the authority to review proposed rent increases when they receive applications submitted by a landlord or tenant, and to determine the rent that may be charged. The Commission's approval is necessary when a landlord wishes to increase the rent above 6 percent. A tenant is not required to pay a rent increase above 6 percent which has not been approved by the Commission. ●

D) Notice of Rent Increase

Before a rent increase of any amount can take place, the landlord must provide the tenant with a standard Notice of Rent Increase form at least 90 days before the date upon which the proposed increase is to take effect. This notice must include the intended increase both in dollars per month and as a percentage of the current rent, and the effective date of the proposed increase.

Although standard leases generally contain a clause permitting the landlord to increase the rent during the term of the lease, rent increases are permissible only at the beginning of a new rental period, and a 90-day notice is always required. This notice is not required where a rent increase is intended to take effect when a new tenant first occupies the rental unit under a new tenancy agreement.

The rent for an individual rental unit may not be increased more than once in any 12 month period, regardless of the amount. This applies whether or not there is any change in the landlord or tenant during the 12 months since the date of the previous increase. A tenant does not have to pay a rent increase of more than 6 percent unless the Residential Tenancy Commission has authorized it. ●

E) The Landlord's Application

If a landlord wishes to raise the rent for a rental unit more than 6 percent, he or she must apply for permission to the Residential Tenancy Commission. To do this, the landlord must file a standard Landlord's Application For Rent Review form (available at all local Residential Tenancy Commission offices) with the Commission no later than 60 days before the intended date of the proposed increase. A copy of the application must be given promptly to the tenant or tenants who, at the time which the application is made, are directly affected by it.

In making an application a landlord must show the Commission that his or her costs of operation have increased, or will increase, sufficiently to justify an increase above 6 percent. When reviewing the landlord's application, the Commission considers the landlord's rental revenue and his or her operating costs, which can include financing, mortgaging, property taxes, maintenance and repairs, and capital expenditures. The Commis-

sion may also consider any financial loss which the landlord has incurred in operating the premises. Any improvement or deterioration in the standard of maintenance or repair of the building is also considered. Where a landlord is in a state of financial hardship, an increase in rental revenue up to 2 percent above the landlord's overall operating costs may be granted by the Commission. ●

F) Whole Building Review

'Whole Building Review' is a new feature of the **Residential Tenancies Act** which applies to residential rental buildings containing more than one unit. Where a landlord applies for approval of a rent increase above 6 percent for any one unit, he or she is also required to apply for a determination of the appropriate rent for all the units in the same building. This examination occurs whether or not rent increases for all the units can take effect at the same time.

When the increased costs of operating a multiple unit building have been determined, the Commission determines the overall amount of increased revenue which the landlord will be entitled to earn from the whole building. In setting the maximum rents for all units in the building, the Commission attempts to balance the rents for similar units taking into consideration the landlord's proposed distribution of rent, the current variations of rent for similar units within the same building, and the rent charged for similar units in the vicinity. ●

G) Tenant's Application

A tenant can request a review by the Commission of any rent increase, whether it is above or below 6 percent. A standard tenant's application for review of intended rent increase must be filed not less than 60 days before the effective date of the increase. More often, a tenant may find that it is only necessary to dispute an increase in rent of 6 percent or less, or where there is or will be a reduction in services without corresponding reduction in rent, for any proposed increase above 6 percent must initially be justified by the landlord to the Commission before any increase can be made final.

Upon receipt of the tenant's application, the Commission may attempt to mediate the dispute between the landlord and the tenant to see if an agreement can be reached on a mutually acceptable rent increase. If this should happen, an agreement would be signed by both parties and would be binding. If no agreement is reached the tenant's application is turned over to a Commissioner who will conduct a hearing. A rent hearing is held before a Residential Commissioner in the area.

H) Notification

Upon receipt of a landlord's application for rent review, the Commission will notify the landlord and the tenant of the time, place and date of a hearing at which the proposed increase will be reviewed.

In the case of a multiple unit building, where the rents of all the units will be reviewed at the hearing, tenants will receive notice of the hearing even though they may not have received a copy of the landlord's application for rent review.

When a hearing date has been set, the landlord must file with the Commission all the material and information upon which he intends to base his application for the rent increase. This material must be submitted no later than 14 days before the hearing. Any material that is filed with the Commission by any party can be examined by all participants before and at the hearing. ●

I) The Hearing

At the hearing, the landlord and the tenant(s) both have the opportunity to present the evidence or arguments concerning the rent increase. Witnesses may be called to give evidence and may be questioned by the participants or the Commissioner. Landlords and tenants may appear in person at the hearing or be represented by someone acting on their behalf. As well, a hearing may proceed in the absence of any party.

Following the hearing, the Commissioner will review the material and determine the rent level for the premises under review. The decision takes the form of an order and is mailed to the landlord and the tenant(s). The order states the maximum rent that may be charged for the unit, and the date on which the rent takes effect. If the order permits a rent increase, no further increase may be charged within 12 months from the effective date of the increase.

In hearings which involve whole building review, the Commissioner's order does not replace the 90 day notice of rent increase which the landlord must give the tenant. The Commissioner's decision will include the reasons upon which the decision was based. In most cases, the Commission tries to reach a decision before the effective date of the proposed increase. If this is not possible, then at the time of the effective date of the proposed increase, the landlord is allowed to charge the intended rent increase (when it is less than 6 percent) or 6 percent--whichever is less--pending the outcome of the hearing. If the Commissioner's order has been issued after the effective date of the increase, an adjustment may be necessary between the landlord and the tenant as a result of the order. ●

J) Appeal

If a landlord or tenant is dissatisfied with the Commission's decision, he or she has the right to appeal the decision. A standard Notice of Appeal must be filed with the Commission within 15 days of receiving the Commissioner's order. There is also a provision of the Act which permits an appeal by a person who was not present at the initial Commission hearing, such as a tenant who for good reason was unable to attend. However, this kind of appeal first requires an application for appeal to a Commissioner; he or she will judge the merits of the application and deny or grant the right to appeal based on his or her own discretion.

If the appeal deals with the issue of a proposed rent increase above 6 percent or with the issue of Whole Building Review, a copy of the appeal application must be given to the other party - i.e., the landlord or the tenant directly involved. If the appeal deals with anything other than the two issues stated above, a copy of the appeal application must be given to all participants in the initial Commission hearing. The appeal of the Commissioner's decision is reviewed by an appeal panel composed of two Appeal Commissioners and a member of the Board of Commissioners, none of whom must have taken part in the making of the decision or order being appealed. The panel may confirm or change the initial decision. The appeal hearing may consider any aspect of the initial hearing: facts, evidence or procedure.

The Act also provides an opportunity to appeal the Appeal Commissioners' decision to the Supreme Court(s.118). It should be noted that this appeal procedure does not permit a re-hearing of the whole case ('de novo'), but rather allows an appeal by way of stated case. In other words, the appellant does not have an automatic right of appeal; he or she can only appeal on questions of law, which in most cases will involve questions of procedure. ●

K) Rebate

If a tenant has paid an increase in rent which is in excess of the amount allowed under s.125 of **The Residential Tenancies Act** (6 percent), or under the former **Residential Premises Rent Review Act, 1975** (where a tenancy agreement was created before the effective date of the new legislation), the tenant may apply to the Commission for an order requiring the landlord to pay back the excess rent to the tenant. In addition, the Commission will establish the permissible rent which may be charged.



- 3 -

Other Forms of Rental Accommodation

A) University Residences

Although they are a form of rental accommodation, Ontario's university residences are not governed by **The Residential Tenancies Act, 1979** and **The Landlord and Tenant Act, 1970**. The exemption under the former legislation is stated specifically in the statute [sec. 4 (h)]; the exemption under the latter is not found in the statute, but is based on the legal understanding of the relationship between the university and the residence student. Consequently, approximately 30,000 students pay a rental fee for an eight-month term in a university residence, but do not receive the protection and legal remedies available under the present landlord and tenant, and rent control legislation. University residences fall outside the jurisdiction of the provincial legislation because it has been generally accepted by lawyers and legislators that the legal relationship between residence students and universities is not that of tenant and landlord, but that of licensee and licensor.

1) License or Lease?

The fundamental legal distinctions between a license and a lease must be understood; they are the bases for the present exemption.

Students entering residences are required to sign a contract (often called an agreement) which lists the rules and policies used by the university to administer the residence. This contract is considered to be a license; it is not a negotiated lease. Both a lease and a license give an individual (a tenant or a licensee) the right to possess or control property owned by another individual (a landlord or a licensor). However, a license does not create the interest in the land which one acquires with the control granted by a lease.

A lease must have a fixed term and is presumed to be transferable (through assignment or subletting) unless otherwise specifically prohibited. Furthermore, the lease can only be terminated according to the regulations of **The Landlord and Tenant Act** or some specific agreement established by the two parties. By comparison, the license is merely contractual in

nature. Therefore, it may have a fixed term, a variable term, or no term at all. Unless specific provisions have been made, a license is not transferable and remains personal between the original licensing parties. Generally, a license (where used for rental accommodation) is considered to be merely the privileged permission to occupy another's land for some particular purpose. A lease, on the other hand, gives the tenant exclusive possession of the land for the fixed term. Of course, the landlord (lessor) holds the rights of reversion; when the tenancy ends, the complete interest in the land reverts to the landlord.

In order to establish whether a rental agreement creates the relationship of landlord and tenant or merely that of licensor and licensee, it is necessary to discover the 'intention' of the two parties. To do this, one must examine the terms of the agreement and the extent of control or possession which the two parties hold.

	LICENSE	LEASE (Tenancy)
Agreement	contract, personal contract	lease
Owner	licensor	landlord, lessor
Renter	licensee	tenant, lessee
Land Interest	no interest in land	confers actual estate created out of the underlying freehold
Term	fixed term, variable term, or no term at all	must have a fixed term
Transfer	not transferable (unless specific provisions have been made)	transferable through assignment or subletting (unless otherwise specifically prohibited)
Termination	termination at any time according to provisions of the contract	termination only according to statutory regulations or some specific agreement of both parties
Control	the privilege to occupy another's land for some particular purpose	exclusive possession of the land for the fixed term

In the eyes of the universities, residences are "services provided for students. As such, they are operated on a non-profit basis". ★ The Dean who administers the residences requires the students to sign an agreement which includes terms that clearly would be illegal under the present landlord and tenant legislation. To take advantage of the opportunity to live on campus, students must accept the policies and rents which are set by the university. Consequently, the resident has no rights; he or she has certain privileges conferred by the administration. The Dean assigns students to their rooms, and also may reassign them to other rooms

★ Standing General Government Committee, Bill 163 (**The Residential Tenancies Act**), Hansard, Thursday March 1, 1978 (morning sitting). This is a quote from the submission of Dr. E. J. Monahan, Executive Director of the Council of Ontario Universities.

without prior notice. This right is retained in order to resolve the problem of two roommates being unable to get along with each other in a double-occupancy room. At McMaster University a residence student must agree to certain financial penalties if he or she withdraws prematurely. Before February 1, the student must pay \$25 upon submission of a written notice of withdrawal. In addition, he or she must pay the equivalent of 4 weeks rent or the balance of rent until another student takes the room - whichever is less. If the student withdraws on or after February 1, he or she must pay the balance of the residence fee until the end of April (the end of the university year). This protects the university from a loss of potential revenue, but penalizes the student by up to \$249 (before Feb. 1) or \$473 (after Feb. 1). In addition to contractual concessions such as these (which would be illegal under the landlord and tenant legislation), students' rooms are also entered regularly by maids who clean the rooms and provide fresh linen. Although the presence of exclusive possession is often cited as the conclusive test of lease or license determination, it is not legally decisive. Thus, despite the fact that maid service is the strongest indication of a license relationship, it is not automatically conclusive. Nevertheless, residences are considered to be controlled by a license arrangement rather than a lease. Therefore, the relationship between residence students and their university is considered to be that of licensees and licensors, rather than tenants and landlords.

2) Attempt at Statutory Protection

Despite the consensus that has been established regarding the legal status of university residences, student representatives have challenged the situation and attempted to bring residences under the protection of landlord and tenant legislation. During the discussions on Bill 163 (the **Residential Tenancies Act**) both university and student representatives made submissions to an all-party Standing Committee of the Ontario Legislature on the topic of the position of university residences with regard to the new legislation. The students argued that residences should be considered as a form of residential tenancy included under the protection of the proposed Statute. Their concern was for the right of appeal to an outside arbitrator if rent increases or residence policy should create a disruptive deadlock or inequitable demands on either parties. The universities, on the other hand, argued for institutional autonomy and the right to reach fair agreements within the university. They do not wish to assume the role of a landlord for residences which they view as a service for students. The most contentious issue in this debate seemed to be that of the nature and extent of the "consultation" required for the exemption of university residences.

3) "Consultation"

When the original rent control legislation was passed (**Residential Premises Rent Review Act, 1975**), the status of university residences was not specified. However, in an amendment passed in 1976, residences were exempted under the following clause:

This Act does not apply to residential premises,...a non-profit institution for the purpose of providing accommodation for its students or staff for educational purposes, except that, where the tenant is a student or a member of the staff at the institution and the students or staff, as the case may be, have a recognized council or association, this exemption does not apply in respect of a rent increase unless the institution files with the Rent Review Officer, before notice of the rent increase is given, a statement certifying that there has been consultation with the council or association, as the case may be, respecting the increase; [s. 14 (a) (iii)]

This dense and confusing paragraph states that students were only protected under the rent review legislation if they had a representative residence council which had not been consulted before the university had filed notice of consultation with the Rent Review Officer prior to giving notice of a rent increase. In the latest rent control legislation (**The Residential Tenancies Act, 1979**), the situation is explained more simply:

This Act does not apply to,

living accommodation provided by an educational institution to its students or staff where...

all major questions related to the living accommodation are decided after consultation with a council or association representing the residents,

unless the living accommodation has its own self-contained bathroom and kitchen facilities and is intended for year-round occupation by full-time students or staff and members of their households; [sec. 4 (h)]

As far as rent review is concerned, then, the university residence can sustain a certain amount of protection by maintaining a responsive elected council which represents its interests. However, until the rest of the provincial statute is proclaimed, residences are only potentially covered under the area of rent review.

What constitutes "consultation"? Let us take McMaster University as our example. Currently, the Dean of Students presents notice of rent increases or changes in residence policy and administration to the Inter-Residence Council. After the decision is made from this consultation, it is sent to the university's Board of Governors for approval. It is debatable whether councils are genuinely approached for advice or suggestions, or if they are merely presented with a fait accompli.

To be meaningful, the consultation should include adequate financial information to justify the reduction in associated residence services and the increase in rent. The required "consultation" mentioned in the legislation might perhaps be better defined.

4) University Guidelines

During the consideration of university residences by the Ontario Legislature's Standing Committee, it became evident that there was a difference of opinion between the student representatives and the spokesman for the universities on whether or not there had been adequate consultation in the past. Nevertheless, when the rent review portions of Bill 163 were proclaimed, university residences remained exempt from the legislation. It was emphasized that elected student representatives must be adequately consulted in the formulation of residence policy. Subsequently, the Council of Ontario Universities established guidelines for their members to follow. These are:

1. Consultation will take place on a regular (at least annual) basis with appropriate groups, comprised of a majority of student residence representatives, on all major policy questions affecting the student residences, including rates, services, staff, and house rules.
2. Adequate financial information will be provided to the consultative groups to explain any proposed changes in residence rates and/or services, such information to include data on current and proposed rates; and adequate time will be given for an examination of such data and for follow-up inquiries.
3. In the event of disputes over student residence rights, an appropriate internal appeal mechanism will be provided.
4. Record of these consultations and appeals will be kept and made available on request to the Tenancy Commissioner.
5. Information on residence rates and services will be provided annually to all residence applicants. There will be no alteration in published rates scheduled after an application has been accepted, provided there is no change in relevant government regulations or the length of the academic term. Information on house rules and appeals procedures will be provided to students upon admission to residence.

5) Where to Go For Help

A residence student who has a grievance about rates or conditions in his or her room, floor or residence hall has several avenues of assistance that may be pursued. Normally, each floor of a residence has an elected representative. In addition, each hall or Residence has a President and a Council. At McMaster University, this body is known as the Inter-Residence Council. Those who wish to challenge or change major residence policy may work through their representative councils.

Another possible source of support is the student union at the institution. If necessary, the residence councils may turn to the greater resources of the union which serves the entire undergraduate population. At

McMaster University, the McMaster Students' Union employs a full-time Ombudsman to assist students with any problem.

Of course, students may also approach their Deans for help. McMaster has a Dean of Men, a Dean of Women, and a Dean of Student Affairs. Each of these individuals has an interest and responsibility in the well-being of residence students.

Dean of Students: 525-9140 ext.4649

Dean of Men: 525-9140 ext.4223

Dean of Women: 525-9140 ext.4371

McMaster Students' Union
(M.S.U. Ombudsman): 528-9887

6) Summary

- residence students hold a license, not a lease.

- in normal circumstances, residence students are not protected by either the **Landlord and Tenant Act** or the **Residential Tenancies Act**. If an elected residence council is not consulted on increases in rates, the students are covered by the **Residential Tenancies Act**.

- withdrawing from residence before Feb. 1 could cost the student up to \$249 in penalties; after Feb. 1, the penalty is a mandatory \$473 fine. (These are figures for McMaster University) .

- students do not have exclusive control of their residence room; concessions denying him or her this control are found in the regulations set forth in the agreement signed by the student on application to the residence.

- the university Deans must consult with elected student councils before implementing major policy changes or increases in residence fees.

- to improve and maintain residence conditions, students must organize themselves and negotiate their legitimate interests with the appropriate university representatives. ●

Rooming, Boarding and Lodging Houses

Rooming or boarding houses may come under one of two pieces of provincial legislation, depending on the degree of control or exclusive possession exercised by persons living in the premises. If a tenant can show 'exclusive possession' through, for example, a key to the room he or she occupies, and if no other services besides rental accommodation are provided in exchange for rent, the boarding house will probably come under **The Landlord and Tenant Act**, and all the rights and obligations under the Act will be enjoyed by the owners and boarders.

However, because most boarding houses provide meals and maid service as well as accommodation in exchange for rent, in many ways these are more similar to hotel accommodation than to residential tenancy accommodation, and are ruled by the provisions of **The Innkeeper's Act**.

Under this legislation, the owner of a boarding or lodging house is an innkeeper with a number of rights quite different from those of a landlord. Under s.2(1) of **The Innkeeper's Act**, for example, an innkeeper is allowed to seize the goods of a lodger to make up for the value of food or accommodation provided but not paid for. If a lodger continues to withhold payment for three months, the innkeeper has the right to sell the goods by public auction. To do this, he or she must give one week's notice of the intended sale by placing an advertisement in a local newspaper, specifying the amount of indebtedness, the name of the defaulting lodger, the time and place of the sale, the name of the auctioneer, and a description of the goods being sold. The money received through this auction must be used as compensation for the accommodation or food provided but not paid for. If there is any surplus, the lodger is entitled to this amount, but he or she has the responsibility of applying to the innkeeper for the return of this amount. A lodger whose goods are seized in this manner may apply to a provincial court judge to ensure that the seizure or auction is lawful.

If the innkeeper loses or damages the seized goods of a lodger, he or she is not liable for loss over \$40, unless the loss is caused by the innkeeper's negligent or wilful conduct. However, for an innkeeper to benefit from this limited liability, he or she must keep this information posted at all times.

Finally, it should be noted that offenses under **The Innkeeper's Act** are punishable by a maximum fine of \$50, 30 days imprisonment, or both ●

C) Mobile Homes

The regulations of Part IV of the **Landlord and Tenant Act** apply to landlords of mobile home parks and owners of mobile homes who rent sites in a mobile home park. Specifically, sections 111-114 of the Act provide special rules for the relationship between landlords and tenants in

mobile home parks. These regulations are:

- a tenant has the right to sell, lease or otherwise part with the possession of a mobile home even while it remains in the mobile home park. This right does not apply to a tenant of a mobile home which is administered by or for the federal, provincial or municipal governments;

- a tenancy agreement may provide that the right to sell, lease or part with possession of the mobile home is subject to the consent of the landlord, and, where it is so provided, such consent shall not be arbitrarily withheld. The landlord may not charge for his or her consent;

- any dispute which arises about the issue of consent may be resolved by summary application to a county or district court;

- the landlord is not entitled to act as the agent of the tenant in any negotiations to sell, lease, or otherwise part with the mobile home, unless there is a written contract which permits it;

- landlords are not allowed to charge for entry, installation or exit fees for mobile homes in parks, or for the granting of a tenancy, except to recover reasonable expenses;

- a landlord is not permitted to restrict the tenant's right to purchase goods or services from the person of his or her choice, although the landlord may set reasonable standards for mobile home equipment;

- a landlord is responsible for providing garbage disposal, roads in the park in a good state of repair, snow removal, maintaining plumbing, sewage, fuel and electrical systems, and maintaining the parks buildings, structures, enclosures and equipment.

Mobile homes which are used as residences are subject to the same rent review laws as the other common types of residences in Ontario; landlords and tenants in mobile home parks are governed by the rent control regulations of **The Residential Tenancies Act**. ■

- 4 -

By-Law Standards

1) Public Health

The health and safety conditions of all buildings in Ontario must conform to the standards established by provincial statute and municipal by-law. Ontario's **Public Health Act, 1960** is a lengthy and comprehensive piece of legislation which governs all areas of public health. "Schedule B" of the Act establishes a municipal health by-law which is considered to be

in force in every municipality "until altered by the Municipal Council". In Hamilton, the **Health By-Law No. 4798** was passed in 1936 and has been regularly amended since then.

2) Property Standards

The construction and alteration of all buildings in Ontario is controlled by the stipulations of the **Ontario Building Code** and various municipal by-laws. Major elements and phases of construction are supervised by municipal licensing and inspection departments. A useful summary of the basic residential building standards can be found in the "Office Consolidation" edition of the **Property Standards By-Law 74-74** available at the Clerk's Office in Hamilton City Hall.

3) The Regional Health Unit

In the City of Hamilton, public health is protected by the Hamilton-Wentworth Regional Health Unit. This department is governed by a Board of Health which consists of the Chief Medical Officer of Health and representatives of the provincial government, the city, and the other municipal councils of the region. The Health Unit is sub-divided into specific divisions, one of which is the Inspection Division. The Inspection Division has a Director, a Chief Inspector, and 17 public health officers. This division is responsible for the enforcement of the provincial and municipal legislation. Each inspector has the duty and power to examine any building which is thought to be in contravention of the statute or by-laws. In so doing, he or she "may enter, inspect and examine any 'premises' at any time of the day or night, as often as he (or she) thinks necessary for that purpose".

4) Entry and Inspection

Although the Health Inspector has wide powers of entry granted by the legislation, he or she is expected to exercise caution in their implementation. When the Health Unit has received a complaint or gained information that a particular building is in violation of health or safety regulations, a health inspector is dispatched to evaluate the conditions of the building. When requesting entry into the building, the inspector must show his or her badge of authority. If the inspector is refused entry into the premises or building, police assistance can be obtained, or a warrant may be requested for the right of entry. After the inspection is completed and the premises is found to be in violation of a regulation, the owner or occupier will be ordered to eliminate the offending conditions. If the situation is grave enough and of immediate and continuous danger to public health and safety, the Health Unit has the power to close the building. Furthermore, in extreme cases, the Health Unit does have the ultimate option of ordering the demolition of the building. However, the closure or demolition of buildings require application to the appropriate court. If necessary, Health officers may also obtain a court injunction in order to assist them in the en-

forcement of the abatement of health and safety violations. The owner or tenant of a premises which has been judged to be in need of corrective measures, closure, or demolition may appeal the decision initially to the Health Unit. Ultimately, the courts may become the last resort.

5) Health and Property Standards for Residential Premises

How do health and property standards specifically relate to the renting of residential premises? According to the **Property Standards By-Law 74-74**

(1) No person shall,

- a) use;
- b) permit the use of;
- c) rent; or
- d) offer to rent,

any property that does not conform to the standards.

(2) The owner of any property shall either;

- a) repair and maintain the property in accordance with the standards;

or

- b) remove or demolish the whole or the offending part of any property that is not in accordance with the standards.

In normal circumstances, the landlord or licensor is responsible for the maintenance of property standards. This obligation includes such things as maintaining a watertight roof, keeping all doors and windows in good repair, maintaining all walls and ceilings free of holes, cracks and loose plaster, installing and maintaining systems for drainage, plumbing, ventilation, electricity and heat. All property must be kept free of vermin. The **Health By-Law** defines vermin as including "rats, mice, cockroaches, bed-bugs, flies and all other such obnoxious animals or insects". Any hole which is intended for ventilation must be screened with wire mesh if it might admit vermin. Every dwelling (except those not intended or permitted to have occupants preparing food) must have the following minimum kitchen facilities: a sink with splash back, a work surface at least 4 feet long and 22 inches wide, at least 30 cubic feet of cupboard space, and a space sufficient to accommodate a cooking range or a countertop cooking unit. Other sections call for adequate natural lighting, ceiling and wall insulation, handrails for stairways, water run-off via an eavestrough or gutter, garbage receptacles and so on. Precise details on these and other items can be found in the **Property Standards By-Law 74-74**.

6) Penalties

Violations of the **Health By-Law** are punishable by fines of up to \$300. The **Property Standards By-Law** provides for fines of up to \$1,000, exclusive of costs. ■

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Directory: places to go for help

Rent Review:

Residential Tenancy Commission
55 Hess Street South
528-8701

Landlord-Tenant Rights and Obligations:

Landlord and Tenant Advisory Bureau
City Clerk's Office
Hamilton City Hall
71 Main Street West
527-0241

Health and Property Standards:

Hamilton-Wentworth Regional Health Unit
Headquarters
74 Hughson Street South
528-1441

City Clerk's Office
Hamilton City Hall
527-0241
(a) property standards by-law (ext. 401)
(b) building code
(c) fire, safety and noise regulations.

Fire Prevention Bureau
529-1139

Legal Aid:

Legal Aid Plan
119 Main Street East
528-0134

McQuesten Legal and Community Services
360-A Queenston Road
545-0442

Strathcona Community Centre
152 Locke Street North
527-4572

C.L.E.O.
25 Hughson Street South
523-4461

Duty Counsel Clinics:

Hamilton Multicultural Centre
500 James Street North
528-0258

Tuesday Evenings
7 p.m.-9 p.m.

McMaster University
Hamilton Hall
Room 212
525-9140

Wednesday Evenings
7:30 p.m.-9 p.m.
(Oct.-Apr. only)

Hamilton Psychiatric Hospital
Auchmar Building
388-2511

Every Wednesday
1 p.m.-4 p.m.

St. Matthew's House
414 Barton Street East
529-0232

Thursday Evenings
7 p.m.-9 p.m.

North End Residence Organization
485 John Street North
2nd Floor
528-5856

Strathcona Community Centre
152 Locke Street North
527-4575

Tuesday and Thursday
Evenings
7:30 p.m.-9:30 p.m.
also Wednesday
2 p.m.-4:30 p.m.

Courts:

County Court
50 Main Street East
528-6708

Provincial Court (Criminal)
125 Main Street East
525-1840

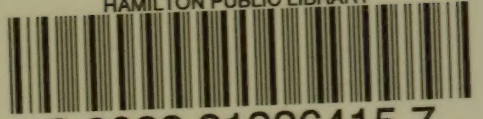
Small Claims Court
25 Hughson South
522-9063

Students:

McMaster University Student Housing
Commons Building
(off and on-campus)
525-9140 ext. 4347

Mohawk College of Applied Arts and Technology
Off-Campus Housing
135 Fennell West
389-4461

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